

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MALIBU TEXTILES, INC.,	:	
	:	Docket No. 07-cv-4780 (SAS)
Plaintiff,	:	
	:	
v.	:	
	:	
CAROL ANDERSON, INC. and	:	
CABI, LLC,	:	
	:	
Defendants.	:	

**PLAINTIFF MALIBU TEXTILES, INC.S' STATEMENT OF UNDISPUTED
MATERIAL FACTS PURSUANT TO LOCAL CIVIL RULE 56.1**

In support of their motion for summary judgment on copyright liability against Defendants Carol Anderson, Inc. and CABI, LLC (collectively, "defendants" or "CABI"), plaintiff Malibu Textiles, Inc. ("Malibu") respectfully submits this Statement of Undisputed Material Facts pursuant to Local Rule 56.1.

Plaintiff's Copyrights

1. Malibu owns the United States Copyright Registration No. VA 923-008, effective October 20, 1998, for Malibu's Pattern No. 1717. Second Amended Complaint, Ex. B.
2. Malibu filed its application for registration for Pattern No. 1717 within five years of the date of the pattern's first publication. *See id.*
3. Malibu owns the United States Copyright Registration No. VA 1-159-155, effective August 26, 2002, in Malibu's Pattern No. 1967. Second Amended Complaint, Ex. D. (hereinafter, Malibu's Pattern No. 1717 and No. 1967 will be referred to collectively as Malibu's "First Design")
4. Malibu filed its application for registration for Pattern No. 1967 within five years of the date of the pattern's first publication. *See id.*

5. Malibu owns the United States Copyright Registration No. VA 1-373-475, effective August 31, 2006, for Malibu's Pattern No. 2351. Second Amended Complaint, Ex. F. (hereinafter, Malibu's Pattern No. 2351 and No. 2479 will be referred to collectively as Malibu's "Second Design")

6. Malibu filed its application for registration for Pattern No. 2351 within five years of the date of the pattern's first publication. *See id.*

7. Malibu owns the United States Copyright Registration No. VA 640-234, effective November 25, 1994, in Malibu's Pattern 1307. Second Amended Complaint, Ex. H.

8. Malibu filed its application for registration for Pattern No. 1307 within five years of the date of the pattern's first publication. *See id.*

9. Malibu owns the United States Copyright Registration No. VA 1-373-476, effective August 31, 2006 for Malibu's Pattern No. 2433. Second Amended Complaint, Ex. J. (hereinafter, Malibu's Pattern No. 1307 and No. 2433 will be referred to collectively as Malibu's "Third Design". Further, the First Design, Second Design and Third Design will be collectively referred to herein as "Malibu's Copyrighted Designs")

10. Malibu filed its application for registration for Pattern No. 2433 within five years of the date of the pattern's first publication. *See id.*

11. Paris Lace, Inc. does not dispute Malibu's ownership of the copyright in the First Design. Kaplan Decl., Ex. A (Acknowledgment of Rights)

12. Linfalls Knitting Mills, Ltd. does not dispute Malibu's ownership of the copyright in the First Design. Declaration of Oswin Fischbach, ¶ 10, Ex. A.

13. Jolanda Kramm does not dispute Malibu's ownership of the copyright in the First Design. Declaration of Jolanda Kramm, ¶ 10, Ex. A.

14. Metrotek, LLLP does not dispute Malibu's ownership of the copyright in the Second Design. Kaplan Decl., Ex. B (Master Agreement)

15. Metrotek, LLLP does not dispute Malibu's ownership of the copyright in the Third Design. Kaplan Decl., Ex. B (Master Agreement)

Defendants' Access

16. CABI's counsel conceded at the January 22, 2008 pre-motion conference before Judge Scheindlin that CABI had access to Malibu's Copyrighted Lace Patterns. Kaplan Decl., ¶ 10.

17. Since at least October 2003, Malibu and CABI have been engaged in a business relationship in which Malibu sold various styles of lace to CABI for use in manufacturing women's clothing, including Malibu's Copyrighted Lace Designs. Naidrich Decl., ¶ 10.

18. In February 2005 and July 2006, Defendants purchased samples totaling seventeen (17) yards of Malibu's First Design lace fabric. Naidrich Decl., ¶10, Ex. B.

19. From February 2004 through July 2006, Defendants purchased over 14,000 yards of Malibu's Second Design lace fabric. Naidrich Decl., ¶ 11.

20. On January 13, 2006, defendants ordered 4,000 yards of Second Design lace fabric. Malibu fulfilled that order in late January/early February 2006. *Id.*, Ex. B.

21. In February and August 2005, CABI purchased samples totaling thirteen (13) yards of Malibu's Third Design lace fabric. Naidrich Decl., ¶ 12, Ex. B.

22. CABI's representatives met with Malibu representatives from time to time to view and purchase samples of Malibu's lace fabric. Naidrich Decl., ¶ 13.

23. Such meetings took place in or around February 2005, July 2006 and August 2006. Naidrich Decl., ¶ 13.

24. Among the textile and lace patterns shown to CABI's representatives during the February 2005, July 2006 and August 2006 meetings were Malibu's First, Second and Third Designs. Naidrich Decl., ¶ 13.

Defendants' Infringing Activities

25. In or around January 2007, CABI offered for sale to the public a Lace Top, Style No. 427.

26. In or around March 2007, CABI advertised on its website and offered for sale to the public a Lace Tunic, style number 488; a Lace Top, style number 490; and a Lace Tank, style number 601. Naidrich Decl., ¶ 18; Second Amended Complaint, Ex. L, M and N.

27. CABI used the same lace pattern to manufacture its Lace Tunic, style number 488; Lace Top, style number 490; and Lace Tank, style number 601. Kaplan Decl., Ex. E; Second Amended Complaint, Exs. L, M and N.

28. In or around September 2007, CABI advertised on its website and offered for sale to the public the La Belle Dress, Style No. 714. Naidrich Decl., ¶ 20; Second Amended Complaint, Ex. O.

29. CABI currently continues to sell to the public Lace Tunic, style number 488; a Lace Top, style number 490; and a Lace Tank, style number 601 in its Factory Store in Los Angeles, California. Naidrich Decl., ¶ 22.

30. Malibu has never given CABI consent or authorization to use or copy any of Malibu's First, Second or Third Designs beyond the use of lace fabric sold by Malibu to CABI. CABI's Answer to the Second Amended Complaint, ¶ 33; Naidrich Decl., ¶ 21.

Substantial Similarity

31. CABI's counsel conceded at the January 22, 2008 pre-motion conference before Judge Scheindlin that the lace used in each of defendants' Infringing Garments is substantially similar to Malibu's Copyrighted Lace Designs. Kaplan Decl., ¶ 10.


32. CABI's counsel further conceded at the January 22, 2008 pre-motion conference before Judge Scheindlin that the only issue that should be before the Court is the validity of Malibu's copyright registrations. Kaplan Decl., ¶ 10.

Dated: April 17, 2008
New York, New York

Respectfully submitted,

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